

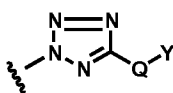
REMARKS

Claim 55 has been amended to correct an inadvertent omission of the phrase “L is absent”. Support for such amendment can be found throughout the specification and claims. Claims 1-70 and 74-87 are pending. No new matter has been introduced by this amendment.

Response to Restriction Requirement/Election

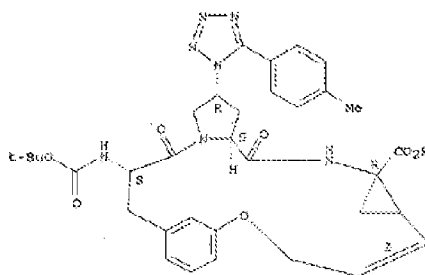
In the restriction requirement, the Examiner has required restriction to one of the groups I, II, III, IV, V-VIII and IX-VII under 35 U.S.C. §121 and also to elect a species.

Applicants elect, with traverse, group I and a species of claim 32, where A is

tBOC, G is OH, L is absent, W is , where Q is absent and Y is 4-methoxyphenyl, and R³ and R⁴ are hydrogens (Example 45, pages 146-147). Claims 1-3, 15, 16, 21, 22, 27-32, 65-70, 74, 75, 78, 79, 81, 82, 85 read on the elected species.

The Examiner asserts a restriction between the groups I, II, III and IV stating that the compounds have different core rings and in each group, variable L is different, which requires a separate structural query. The Examiner further asserts that the compounds “are not disclosed as capable of use together and they have different designs, modes of operation, and effects.”

With regard to the first allegation that there is no common core due to the presence of the variable L, the Applicants would like to point to the fact that the core submitted by the Examiner for searching allows for variability in L because ring node 8 of the Examiner’s structural query was not attached to the equivalent ring node 15, which allows any number of intervening nodes/atoms to be present between these nodes in the query. For example, the search provided the following compound on page 5 of the Examiner’s search result:



Since the search carried out by the Examiner would encompass compounds of groups I, II, III and IV, therefore the restriction requirement between these groups is improper. The Applicants respectfully request that the restriction requirement be withdrawn.

With respect to the second allegation, the compounds of the invention can be used together. See page 107, lines 4-27. Further, this fact would be readily apparent to the skilled artisan as the compounds share a common utility. With regard to the second allegation that the compounds have different designs, modes of operation and effect, the compounds have a similar design, as evidenced by the common core structure and, presumptively, possess a common mode of operation and effect as anti-HCV agents. Thus, the provisions of the MPEP relied upon in support of the restriction requirement are simply not met.

This restriction requirement is, in essence, a refusal to examine the claimed invention.

The MPEP states that restriction within a generic chemical claim can be made when the compounds lack unity of invention. MPEP § 803.02. In this case, Applicants submit that the foregoing restriction requirement is improper because the unity of invention exists in the present claims. The compounds of present invention possess a common tricycle macrocyclic pharmacophore (i.e., a substantial common core structure) and possess a common utility as anti-HCV agents.

Applicants respectfully traverse this restriction requirement and request that the full scope of the invention be examined.

With respect to the restriction requirement between the product and their methods of use, Applicants respectfully traverse. The Examiner asserts that the compounds would be useful to treat SARS virus. There is no evidence of record to suggest that this is true.

Further, it is submitted that no unreasonable burden is incurred by the search for process of product when the product search has been carried out. The Examiner's assertion that the instant case a proline derivative with a ring that is not pyrrolidine could not be reacted to make compound of formula I is not understood. The Examiner has not articulated which reaction would not yield compound of formula I.

For the reasons discussed above, Applicant's respectfully submit that the groups and species elections are improper. Applicants respectfully request that all groups and species be rejoined for examination and the requirement for election between groups and species be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 251-3509.

Respectfully submitted,

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Dated: February 01, 2008